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Application Number	09/618,955
Filing Date	July 19, 2000
First Named Inventor	Tu
Art Unit	2154
Examiner Name	El Hady, N.
Attorney Docket Number	FUSN1-01103US0

Total Number of Pages in This Submission

ENCLOSURES (Check all that apply)

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Firm or Individual name	Brian I. Marcus, Esq., Vierra Magen Marcus Harmon & DeNiro LLP
Signature	
Date	September 30, 2004

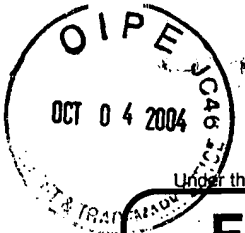
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☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 165

Complete if Known

Application Number	09/618,955
Filing Date	July 19, 2000
First Named Inventor	Tu
Examiner Name	El Hady, N.
Art Unit	2154
Attorney Docket No.	FUSN1-01103US0

METHOD OF PAYMENT (check all that apply)☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account:Deposit Account Number: 501826
Deposit Account Name: Vierra Magen Marcus Harmon & DeNiro LLP

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☐ Charge fee(s) indicated below ☒ Credit any overpayments☒ Charge any additional fee(s) or any underpayment of fee(s)☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.**FEE CALCULATION****1. BASIC FILING FEE**

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)				(\$)	0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims		Extra Claims		Fee from below		Fee Paid	
Independent Claims		-20** =		X		=	0
Multiple Dependent		-3** =		X		=	0

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2)				(\$)	0

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Large Entity | Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	165
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

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*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 165

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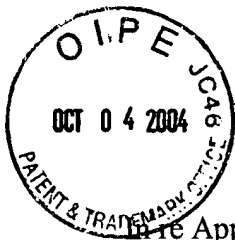
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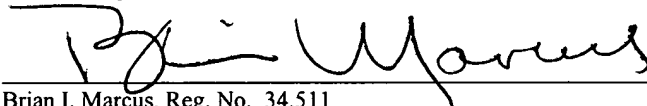
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application)	PATENT APPLICATION
)	
Inventor: Edgar Allen Tu)	
)	Art Unit: 2154
Application No.: 09/618,955)	
)	Examiner: El Hady, Nabil M.
Filed: July 19, 2000)	
)	Customer No. 28554
Title: AGENT SYSTEM FOR A SECURE)	
REMOTE ACCESS SYSTEM)	
)	

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Brian I. Marcus, Reg. No. 34,511

Signature Date: September 30, 2004

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
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Sir:

This brief is submitted in accordance with 37 C.F.R. §1.192, in triplicate, following the Notice of Appeal filed by Appellant(s) filed on September 16, 2004. The fee set forth in 1.17(c) is submitted herewith.

10/05/2004 HVUONG1 00000018 09618955

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I. REAL PARTY IN INTEREST (37 C.F.R. §1.192(c)(1))

The real party in interest is fusionOne, Inc.

II. RELATED APPEALS AND INTERFERENCES (37 C.F.R. §1.192(c)(2))

Appellant knows of no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS (37 C.F.R. §1.192(c)(3))

Claims 1-9 are pending in this application. Of these, claims 1-9 stand finally rejected. Appellant herein appeals from the final rejection of each of claims 1-9.

IV. STATUS OF AMENDMENTS (37 C.F.R. §1.192(c)(4))

No amendments are submitted with this Brief. All amendments to date have been entered.

V. SUMMARY OF THE INVENTION (37 C.F.R. §1.192(c)(5))

The present invention relates to an agent system for communicating secure data between a base device and a secure remote access system. Conventional systems such as remote access servers (RAS) and remote control servers (RCS) allow access and communication between two computers that are remote from each other either through a point-to-point telephone connection or via the Internet. (Patent Application, pp 2-3). Such conventional systems have several drawbacks. First, with respect to file synchronization, where a remote computer downloads files from a host computer, those files are no longer available on the host computer. Thus, for example, if an email is downloaded to a remote computer, it may no longer be available for viewing from the host computer (Patent Application, p. 4). Second, files created with proprietary applications are generally stored in a proprietary file format. Unless the remote computer also has the same proprietary applications as the host computer, the remote computer will often be unable to access or use those files (Patent Application, p.4). Third, such conventional remote access systems are generally complicated and must be administered by a network systems administrator. (Patent Application, pp. 4-5).

These shortcomings of the prior art are overcome by the present invention which in embodiments relates to an agent system and method residing on a base device, such as a remote computer or hand-held device, which provides secure communication between the base device and one or more remote access devices, for example via the Internet. The agent generally comprises software code or algorithm which is executed within the base device for carrying out the secure communication. (Patent Application, p. 5-6). The agent system initiates data communication with the remote access devices by sending requests and receiving replies from the remote access devices. The replies may include requests to retrieve, store, update, and/or delete data associated with the base device, which the agent system carries out. The agent system further provides reply data to such requests to the remote access devices. (Patent Application, p.6).

The agent may include a user-interface module, a registration module, a server communication module, and a job handler module. (Patent Application, p.12-13). The user-interface module comprises a conventional user-interface such as a graphical user-interface (GUI) for receiving input commands and/or displaying output to the user of the base device, such as for example registration information (e.g., user name, password, etc.), which registration information is communicated to the registration module for processing. (Patent Application, p.13). The server communication module carries out communications to and from the agent. The server communication module is further coupled to the job handler module. When a task is received in the agent via the server communication module, the server communication module communicates the task to the job handler module for processing. (Patent Application, p.14).

VI. ISSUES FOR REVIEW (37 C.F.R. §1.192(c)(6))

A. Whether Claims 1, 6 and 8 of the application are properly rejected under 35 U.S.C. § 102 over U.S. Application Publication No. 2002/0047471 A1 to Johnson.

B. Whether Claims 2-5, 7 and 9 of the application are properly rejected under 35 U.S.C. § 103 over U.S. Application Publication No. 2002/0047471 A1 to Johnson in view of U.S. Application Publication No. 2002/0016912 A1 also to Johnson.

VII. GROUPING OF CLAIMS (37 C.F.R. §1.192(c)(7))

Applicant requests for the purposes of review that Claims 1-7 be grouped together and Claims 8-9 be grouped together.

VIII. ARGUMENT (37 C.F.R. §1.192(c)(8))

A. The Cited References

The Examiner has based the rejection on two references to Johnson, which in turn claim priority to two earlier references to Johnson also relied on by the Examiner. For ease of convention, the following will be used to refer to the various Johnson references:

- Johnson I - Publication No. US 2001/0047471, forming the basis of the rejection of claims 1, 6 and 8 under §102(e);
- Johnson II - Publication No. US 2002/0016912, forming part of the basis of the rejection of Claims 2-5, 7 and 9 under §103(a);
- Johnson III - U.S. Patent No. 6,499,108, of which Johnson I and Johnson II are continuation-in-part applications;
- Johnson IV - U.S. Patent No. 5,970,149, of which Johnson I and Johnson II are continuation-in-part applications.

B. The Examiner Erred In Rejecting Claims 1, 6 and 8 over Johnson I Under 35 U.S.C. §102(e)

1. Johnson I Has A Priority Date Under 102(e) After the Filing Date of the Present Invention

Johnson I was filed on August 1, 2001. The present application was filed on July 19, 2000. Therefore, Johnson I by itself cannot be considered prior art to the present invention. The Examiner has however stated that the “same concept” of Johnson I used to reject the claims was supported in the earlier Johnson III and IV references, and that therefore the rejection over Johnson I was proper. The Examiner stated:

[Johnson IV] disclose the same concept [as Johnson I] of a base device with a secure agent system operating within to secure communicating data associated with the base device..., the base device configured to be coupled with a remote access system.

[Johnson III] disclose the same concept [as Johnson I] of a base device with a secure agent system operating within to secure communicating data associated with the base device..., the base device configured to be coupled with a remote access system.

Applicant respectfully submits that Johnson III and Johnson IV do not provide adequate support for the disclosure of Johnson I to allow the priority date of Johnson I to be carried back before applicant’s filing date. Therefore, Johnson I cannot be used as prior art to the present invention under Section 102(e).

Applicant respectfully submits that the Examiner has applied and incorrect standard with regard to when a CIP may benefit from the filing date of the parent as a prior art reference under §§102(e) and 120. In a chain of continuation-in-part applications, the date of a parent application can be relied upon under § 120 as a 102(e) reference with respect to claimed elements *if and only if* all of the claimed elements are disclosed in the parent application. *In re Wertheim*, 646 F.2d 527 (CCPA 1981); *In re Smith*, 458 F.2d 1389 (CCPA 1972). Therefore, to support a rejection under Section 102(e), the Examiner must show that each of the claimed features is disclosed within a reference in existence at the time the present application was filed.

There are several features of the invention recited in Claims 1, 6 and 8 which are nowhere disclosed in Johnson III or IV, nor has the Examiner indicated in the Office Actions that these features are shown in Johnson III or IV. Without such a showing by the Examiner, Johnson III and IV may not be relied upon as support for the rejection over Johnson I. For example, at least the following express claim elements are not found in either Johnson III or IV:

- a job handler module operatively coupled to said server communication module, said job handler configured to retrieve, store, update and delete data associated with the base device (Claim 1);
- retrieving, storing, updating and deleting data associated with the base device according to commands received by the base device from the remote access system (Claims 6 and 8).

As set forth below, applicant respectfully submits that these features are not shown in Johnson I either. However, whether or not Johnson I shows these features is immaterial, as Johnson I was filed after the filing date of the present application and therefore by itself is not prior art. The disclosure of Johnson I is only relevant to the extent it is supported by and entitled to the filing dates of Johnson III and/or IV. The scope of prior art may only include references filed prior to the filing date of the instant application. While Johnson III and IV fall within this scope, Johnson III and IV do not disclose the above-described limitations of the claimed invention.

The Examiner appears to appreciate this. If Johnson III or IV showed each feature of the claimed invention, then the Examiner would have used Johnson III or IV as the basis of the rejection. However, the Examiner appears to understand that Johnson III and IV do not disclose all of the claim elements and therefore, could not form the basis of the rejection. Instead, the Examiner attempts to circumvent this requirement by stating that Johnson I shows the claim limitations, and then stating Johnson I is entitled to the Johnson III or IV filing dates with respect to the claim limitations. This is impermissible unless the Johnson III or IV also disclose those claim limitations. As discussed above, they do not.

Based on the above, it is respectfully submitted that Johnson I is not prior art to the present invention, and while Johnson III and IV may be within the scope of the prior art, they do not disclose the claimed invention.

2. Johnson I Does Not Disclose the Invention Recited in Claims 1, 6 and 8

In the Office action, the Examiner has rejected Claims 1, 6 and 8 under §102(e) over Johnson I, stating in part:

Johnson does not specifically disclose retrieving, storing, updating and deleting data. However, these processes are inherent in “transference of data associated therewith” of ([0047], lines 13-15).

Applicant respectfully submits that the Examiner has applied an incorrect standard to inherency and/or meaning to the language said to inherently show the claimed limitations. Where a reference is alleged to inherently disclose a claim element, the missing element must necessarily be present in the cited reference and that it be so recognized by those of skill in the art. It is not enough that the missing element is possibly or probably present. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999).

The alleged support set forth by the Examiner for the claim limitations is as follows:

As used herein, the term "adaptor" refers synonymously to those hardware configurations such as, but not limited to, "adaptor cards" which allow for connectability between two or more central processing units *and the transference of data associated therewith*. (Johnson I, ¶ 0047, emphasis added).

The phrase “transference of data associated therewith” implies no more than the adaptor allows for transfer of data between two or more central processing units. There is no disclosure whatsoever at that section that:

- the transference of data must include the storing of data;
- the transference of data must include the updating of data;
- the transference of data must include the deleting of data.

As these features are not necessarily part of the transference of data, these features cannot be considered inherent as that principal applies to §102.

As indicated above, Johnson I cannot be considered prior art to the present invention. Moreover, Johnson I fails to disclose the features recited in Claims 1, 6 and 8. It is therefore respectfully requested that the rejection on these grounds be withdrawn.

3. The Advisory Action

In the advisory action mailed August 6, 2004, the Examiner indicated that applicant's Response After Final filed June 24, 2004 would not be considered because the Response does not place the application in a condition for allowance. Under paragraph 5, the Examiner stated that "Johnson IV falls within the scope of the invention." The Examiner then set forth where Johnson IV allegedly shows the features of the invention.

It is unclear from this whether the Examiner's statements in the Advisory Action are intended to remove the rejection over Johnson I and make a new rejection over Johnson IV, or whether the statements with regard to Johnson IV were intended to show how it provides support for the cited Johnson I reference. In any event, it is respectfully submitted that Johnson IV fails to disclose the invention for the reasons set forth above.

C. The Examiner Erred In Rejecting Claims 2-5, 7 and 9 over Johnson I in View of Johnson II Under 35 U.S.C. §103

Claims 2-5, 7 and 9 were rejected under §103 over Johnson I in view of Johnson II. As stated above, it is respectfully submitted that Johnson I is not prior art to the present invention. Moreover, Claims 2-5, 7 and 9 each depend directly or indirectly on Claims 1, 6 and 8, and are therefore patentable over the cited references as set forth above with respect to Claims 1, 6 and 8. None of the cited references, taken alone or in combination with each other teach or suggest the invention recited in Claims 1, 6 and 8, nor Claims 2-5, 7 and 9 dependent thereon.

Furthermore, it is respectfully submitted that Johnson II is not prior art to the present invention as Johnson II was filed October 4, 2001 and the present application was filed July 19,

2000. The Examiner has stated that Johnson II is prior art based on same grounds as Johnson I; namely on the grounds that Johnson III and/or Johnson IV disclose the "same concept" as Johnson II.

Applicants respectfully disagree on similar grounds to those discussed above with respect to Johnson I as prior art; namely, that the limitations specifically cited from Johnson II as reading on the claims are not supported in Johnson III or IV, and that the Examiner appears to understand this because if Johnson III or IV did in fact support the rejection, then the rejection would be based on Johnson III and/or IV, and not the later filed Johnson II.

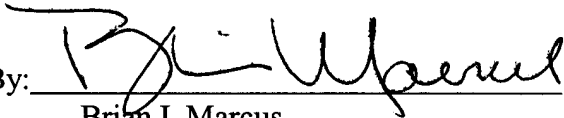
IX. CONCLUSION

Based on the above, it is respectfully submitted that Claims 1-9 are patentable over the cited references, and it is respectfully requested that the rejection of Claims 1, 6 and 8 on Section 102(e) grounds, and that the rejection of Claims 2-5, 7 and 9 on Section 103 grounds be withdrawn.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this Appeal Brief, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: September 30, 2004

By: 
Brian I. Marcus
Reg. No. 34,511

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APPENDIX
CLAIMS ON APPEAL
37 C.F.R. §1.192(c)(9)

1. (original) In a base device configured to be coupled with a remote access system, a secure agent system operating within said base device comprising:

a) a server communication module configured to initiate data communication with the remote access system; and

b) a job handler module operatively coupled to said server communication module, said job handler configured to retrieve, store, update and delete data associated with the base device.

2. (original) The secure agent system of claim 1, wherein said server communication module is further configured to periodically transmit task connection requests to the remote access system and receive task connection replies from the remote access system.

3. (original) The secure agent system of claim 2, wherein said server communication module is further configured to communicate said task connection replies to said job handler module for processing.

4. (original) The secure agent system of claim 2, wherein said server communication module is configured to transmit task connection reply data in response to said task connection replies.

5. (previously presented) The secure agent system of claim 1 further comprising a wake-up module operatively coupled to said server communication module, said wake-up module configured to monitor the base device for a wake-up signal and to connect the base device to a internet service provider associated with the base device when the wake module receives a wake-up signal.

6. (original) A program storage device readable by a machine, tangibly embodying a program of instructions executable by the machine to perform a method for securely communicating data associated with a base device to a remote access system, said method comprising:

- a) initiating data communication by the base device with the remote access system;
- b) retrieving, storing, updating and deleting data associated with the base device according to commands received by the base device from the remote access system.

7. (previously presented) The program storage device of claim 6, said method further comprising:

- a) monitoring the base device for a wake-up signal prior to initiating data communication with the remote access system; and
- b) connecting the base device to a internet service provider associated with the base device when the wake module receives a wake-up signal.

8. (original) A method for securely communicating data associated with a base device to a remote access system, said method comprising:

- a) initiating data communication by the base device with the remote access system;
- b) retrieving, storing, updating and deleting data associated with the base device according to commands received by the base device from the remote access system.

9. (previously presented) The method of claim 8, further comprising:

- a) monitoring the base device for a wake-up signal prior to initiating data communication with the remote access system; and
- b) connecting the base device to a internet service provider associated with the base device when the wake module receives a wake-up signal.